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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,339	04/01/2004	Julio A. Abusleme	108910-00128	5351
4372	7590	12/22/2006		
ARENT FOX PLLC 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036			EXAMINER ZEMEL, IRINA SOPJIA	
			ART UNIT	PAPER NUMBER
			1711	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/814,339

Applicant(s)

ABUSLEME ET AL.

Examiner

Irina S. Zemel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102/103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,107,393 to Abusleme et al', (hereinafter "Abusleme") or US PreGrant Publication 2001/0003124 to Zolotnitsky et al., (hereinafter "Zolotnitsky").

The rejection of claims 1 and 13 stands as per reasons set forth in the previous office action.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 2, 3 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky and Abusleme.

The rejection stands as per reasons of record. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky or Aabusleme in combination with Encyclopedia of Polymer Science and Engineering. Additives, (Hereinafter "Encyclopedia").

The rejection of claim 4 over the combined teachings of the above cited references stands as per reasons of record.

Claims 5-11 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky or Aabusleme in combinations with Encyclopedia and US

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Patent 4,304,713 to Perelman (hereinafter "Perelman") or US Patent 5,688,457 to Buckmaster et al., (hereinafter "Buckmaster").

The rejection of claims 5-11 and 16-17 over the combined teachings of the above cited references stands as per reasons of record.

### ***Response to Arguments***

Applicant's arguments filed 8-9-2006 have been fully considered but they are not persuasive. The Examiner already answered the arguments in the Advisory Action mailed 8-30-2006, and repeats once again that the arguments are not commensurate in scope with the claimed invention. The gist of applicants arguments regarding Zolotnitsky and Abusleme references is that the claimed invention is directed to a composition containing at least two different E/CTFE copolymers with different amounts of ethylene. The applicants argument is that "By using the term "composition of polymers," the Applicants have tried to explain that the present polymeric composition is formed by the E/CTFE copolymers having a content of E from 0.5 to 20%, i.e., different amounts of E, such that the composition contains ethylene in an amount lower than 10%." (Emphasis added).

This statement is simply **not commensurate in scope** with the claimed invention. While the claimed subject matter is, indeed, called "a polymeric composition", the claims clearly read on the polymeric compositions containing only ONE copolymer, namely E/CTFE polymer. The presence of the E homopolymer or CTFE homopolymer, or any other polymer, for that matter, is OPTIONAL, but is not excluded, as per claim

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language of the base claim 1, and NONE of the subsequent dependent claims require the presence of either the E polymer OR more than one E/CTFE copolymer based on its E content. The claim language does require the presence of "copolymers" in plural, but this claim language, as REPEATEDLY discussed by the examiner is met by the presence of two t copolymers that differ in ANY way from each other, such as molecular weight, or simply two copolymer chains. It is plain unreasonable and unwarranted either by the facts or the existing body of law to interpret the claim language "A thermoprocessable polymeric composition comprising ethylene/chlorotrifluoroethylene copolymers consisting essentially of ethylene and chlorotrifluoroethylene and containing from 0.5 to 20% by moles of ethylene," as requiring two copolymers of different E content, even in view of the subsequent limitation "wherein the composition contains in total from 90 to 99.5% by moles of chlorotrifluoroethylene and from 0.5 to 10% by moles of ethylene", as this limitation can be easily satisfied by the presence of any number of different additional components containing E and CTFE in various amounts.

All of the other arguments presented by the applicants are based on the applicants interpretation of the claims as necessarily requiring two copolymers of E/CTFE that differ from each other in the content of E so to provide the overall composition with the claimed E/CTFE content. As the examiner can NOT agree with such interpretation of the claims as being reasonable, none of the arguments appear to be relevant to the claims as interpreted by the examiner.

The examiner discussed the limitations of the instant claims and the scope of the **claimed invention** in four consecutive office actions and pointed out REPEATEDLY that the invention as claimed does not require the presence of a second polymer as CLEARLY indicated by the claim language.

***Allowable Subject Matter***

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the prior art reference disclose the process to obtain the claimed polymer composition (with all of the limitations of the composition as per claim 1) via a process that comprises the steps of claim 12. See also discussion in the Office action dated 11-12-2004.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. The applicants did NOT present ANY new argument or amendments that have not been earlier present and addressed in the previous actions (including advisory actions) Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

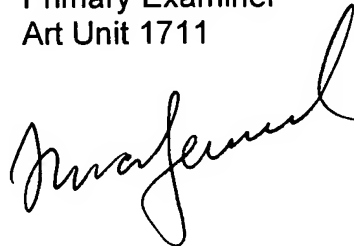
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Irina S. Zemel  
Primary Examiner  
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A handwritten signature in black ink, appearing to read 'Irina S. Zemel', written in a cursive style.

ISZ